



**U S Army Corps  
of Engineers**  
Huntington District

# Public Notice

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In reply refer to Public Notice No.

**2005-1275-TUS**

Issuance Date:

**May 7, 2007**

Stream:

-UNTri Oldtown Creek

Closing Date:

**June 6, 2007**

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Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

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**PUBLIC NOTICE:** The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**REGULATORY PROGRAM:** Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

**SECTION 10:** The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

**SECTION 404:** The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**TO WHOM IT MAY CONCERN:** The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the Ohio Environmental Protection Agency to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Oxford Mining Company  
544 Chestnut Street  
PO Box 427  
Coshocton, Ohio 43812

**LOCATION:** The project area is located in jurisdictional waters of the United States in the Oldtown Creek watershed. The site is located east of County Road 56 and south of Oldtown Valley Road (County Road 24) in York and Clay Townships, Tuscarawas County, Ohio.

**DESCRIPTION OF PROPOSED WORK:** The applicant proposes to place fill material into waters of the United States in association with the construction of a surface coal mine operation. According to the applicant, the purpose of the project is to recover available coal reserves in the project area.

The project area encompasses a total of approximately 129 surface acres. Jurisdictional waters within these limits total 34 linear feet of perennial stream (within an existing culvert), 3,718 linear feet of intermittent stream and 2,320 linear feet of ephemeral stream. Jurisdictional waters of the United States just outside the project limits include 521 linear feet of intermittent stream and 0.39 acre of wetlands. Each of these waters were determined to exhibit a hydrologic connection to Oldtown Creek, which is a tributary in the Tuscarawas River watershed. The Tuscarawas River is a Section 10 navigable waterway.

An additional 922 linear feet of ephemeral stream and 0.17 acre of open water impoundments are located within the project boundaries and do not exhibit a connection to a surface tributary system. Therefore, these waters were determined to be isolated waters of the State of Ohio. While impacts to isolated waters of the State are proposed to occur, these impacts are not regulated under Section 404 of the Clean Water Act.

The proposed mining plan involves the removal of approximately 430,000 tons of coal from the #5 and #6 coal seams through surface and auger mining over a period of five years. The applicant proposes to place fill material into 3,165 linear feet of intermittent stream and 1,476 linear feet of ephemeral stream in association with coal extraction and sediment pond construction. An additional 284 linear feet of intermittent stream would be secondarily impacted in association with sediment transport. Details concerning individual waters proposed to be impacted, their quality (as assessed by Qualitative Habitat Evaluation Index, when appropriate) and purpose of proposed impacts are attached (Table 1).

Approximately 25 percent of the project area is characterized by unreclaimed mining activities that occurred prior to implementation of the Surface Mining Control and Reclamation Act (SMCRA). As such, these parts of the project area are characterized by pit impoundments, exposed spoil piles and highwalls. Following coal removal, the applicant proposes to reclaim these areas thereby covering highwalls and returning these areas to approximate original contours.

**MITIGATION:** To compensate for proposed impacts to jurisdictional waters of the United States, the applicant has proposed avoidance, minimization and compensation measures. A conceptual mitigation plan has been submitted for review.

The applicant proposes to avoid impacts to 0.39 acre of jurisdictional wetland, 790 linear feet of intermittent stream, and 844 linear feet of ephemeral stream during project implementation.

Impacts to waters of the United States on-site and downstream of the project area are proposed to be minimized through implementation of best management practices. Appropriate construction and use of sediment ponds, drainage control structures, diversion ditches, and other best management construction practices are proposed to minimize impacts to waters of the United States.

Because a portion of the proposed mine area has been previously affected by mining prior to implementation of the SMCRA, the applicant has proposed to reclaim these areas, resulting in the elimination of highwalls and pit impoundments, the removal of slide-prone areas and the reconstruction of natural drainage patterns. A total of 422 linear feet of stream would be gained in the project area following completion of on-site activities, as a natural drainage pattern would be re-constructed in the location of a current pit impoundment.

To compensate for the loss of jurisdictional stream on-site, the applicant proposes to reconstruct a total of 3,891 linear feet of intermittent stream and 2,398 linear feet of ephemeral stream on-site. Backfilling and rough grading in association with stream reconstruction would occur within 60 days or 1,500 linear feet following coal removal activities in that area of the site. Native shrubs are proposed to be established within stream and wetland buffers.

The applicant proposes to monitor channel stability, hydrology, chemical parameters (pH, total suspended solids, specific conductivity, total alkalinity, total acidity, total iron, total manganese, sulfates and hardness) and riparian vegetation in association with stream mitigation. To date, the applicant has not provided information concerning target conditions for each of the monitored parameters that must be obtained to consider the streams and wetlands successful. The applicant also proposes to monitor the QHEI scores of all reconstructed streams and ensure that re-constructed channels receive a QHEI at least as high as those scores received prior to mining activities. A final mitigation plan providing details concerning the proposed work plan, performance standards, site protection, contingency plan, monitoring, and long-term management will be requested by this office.

**ATTACHMENTS:** Plans of the proposed work are attached to this notice.

**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain that certification from the Ohio Environmental Protection Agency.

**HISTORIC & CULTURAL RESOURCES:** The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the Ohio Historic Preservation Office (OHPO) for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

**THREATENED & ENDANGERED SPECIES:** This project is located within the known or historic range of the Indiana bat (endangered); clubshell mussel (endangered); and bald eagle (threatened).

Based on project location and habitat availability, it has been determined this proposal would have no affect on the clubshell mussel or the bald eagle.

The project area does contain suitable habitat for the Indiana bat. To address the requirements outlined in the Ohio Department of Natural Resources' *Permitting Policy Procedure Directive 2004-01: Measures for Protecting the Endangered Indiana Bat*, the applicant has provided information concerning the presence of suitable Indiana bat habitat on-site. Within the 129 acre project area, a total of approximately 98 acres are forested. The majority of the forested areas consist of poor or moderate quality habitat for the Indiana bat. Three areas comprising less than 15 acres on-site are characterized by trees with good suitable habitat for the Indiana bat. The applicant indicates a bat survey will likely be conducted this summer. Following completion of this survey, an effect determination regarding the Indiana bat will be made and coordinated with the U.S. Fish and Wildlife Service (USFWS).

This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

**PUBLIC INTEREST:** Any person who has an interest, which may be adversely affected by the issuance of a permit, may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U.S. Army Corps of Engineers  
ATTN: CELRH-OR-F Public Notice No. 2005-1275-TUS  
502 8<sup>th</sup> Street  
Huntington, West Virginia 25701-2070

Please note, the names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Ms. Desiree L. Hann of the North Regulatory Section at 304-399-5210.



Ginger Mullins  
Chief, Regulatory Branch

(O)

**Table 1.** Proposed impacts to jurisdictional streams on-site in association with the Mizer surface coal mine site, Tuscarawas County, Ohio.

Stream ID	Flow	QHEI	On-site length	Impact length	CR Impact	PC Impact	ST impact
A	I	35	875	838	391	261	186
B	I	30	1117	1003	688	297	18
C	I	55	767	759	759		
D	I	36	897	787	562	177	48
E	I	38	62	62	62		
1 *	E	N/A	401	401 *	401 *		
2 *	E	N/A	72	72 *	72 *		
3	E	N/A	339	236	236		
4	E	N/A	136	96	96		
5	E	N/A	161	161	161		
6 *	E	N/A	449	449 *	449 *		
7	E	N/A	173	173	173		
8	E	N/A	393	85	85		
9	E	N/A	110	0	0		
10	E	N/A	144	117	117		
11	E	N/A	190	190	190		
12	E	N/A	151	151	151		
13	E	N/A	138	14	14		
14	E	N/A	385	253	253		

**Stream ID:** as described in the final investigation of waters of the U.S. prepared by Buckeye Mineral Services, Inc.

**Flow:** Designation of stream flow: I, Intermittent; E, Ephemeral

**QHEI:** Qualitative Habitat Evaluation Index scores as determined by the Ohio EPA's protocol;

**CR impact:** Proposed stream impacts associated with removal of coal;

**PC impact:** Proposed stream impacts associated with sediment pond construction activities;




**ST impact:** Proposed secondary stream impacts associated with sediment transport; and

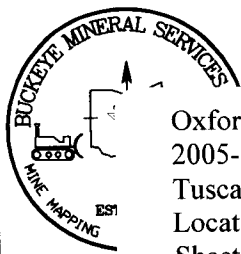
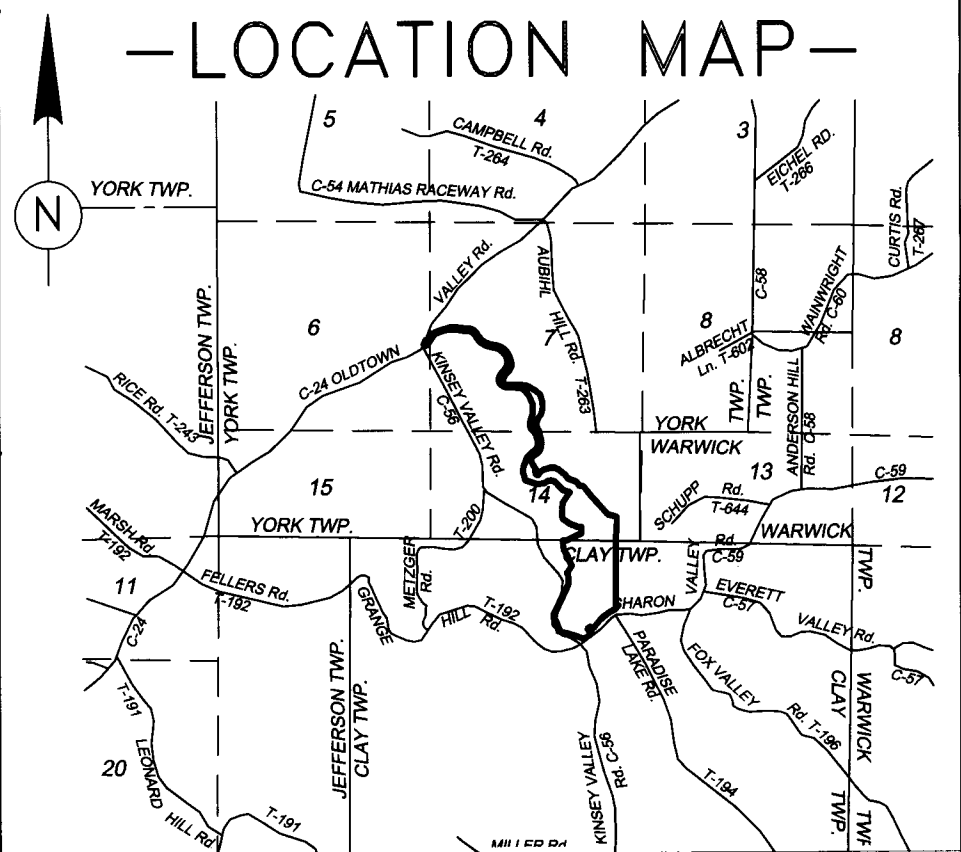
\*, On-site streams that do not have a hydrologic connection to a surface tributary system and are isolated waters of the State.

SCALE: 1" = 1 MILE

USGS QUAD  
NEW PHILADELPHIA  
&  
STONECREEK  
DRAINAGE BASIN  
OLDTOWN CREEK

SCALE: 1" = 2000'

 PROPOSED PERMIT AREA  
 STREAM BUFFER ZONE  
 LAND USE CHANGE AREA



Oxford Mining Company  
2005-1275-TUS – UNTriB Oldtown Creek  
Tuscarawas County, Ohio  
Location Map  
Sheet 1 of 8



LOCATION MAP		PERMIT No.
PREPARED BY: BUCKEYE MINERAL SERVICES, INC.		
for		
OXFORD MINING COMPANY, INC.		
MIZER		
COUNTY: TUSCARAWAS	STATE: OHIO	
TOWNSHIP: YORK/CLAY	SCALE: AS SHOWN	
DATE PREPARED: 5/15/06 REV: / /		

Tuscarawas County, Ohio  
Plan View  
Sheet 2 of 8

STREAM F DETAIL

LEGEND

- SURFACE MINING AREA = 46.7 ACRES
- AUGER MINING AREA = 24.4 ACRES
- PERMIT BOUNDARY

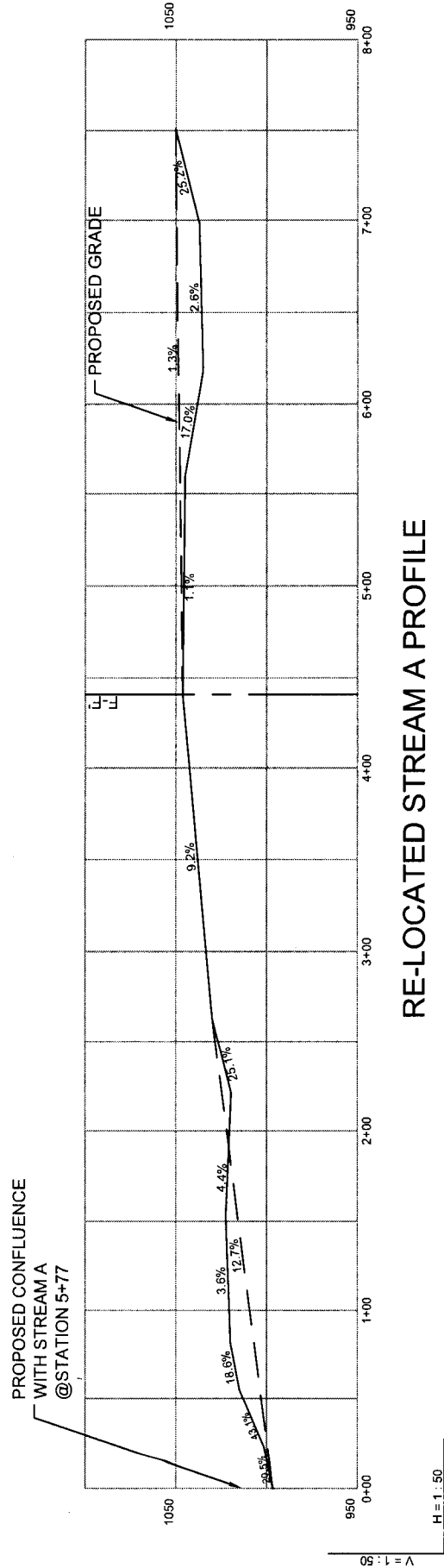
- EPHEMERAL STREAM
- INTERMITTENT STREAM
- PERENNIAL STREAM

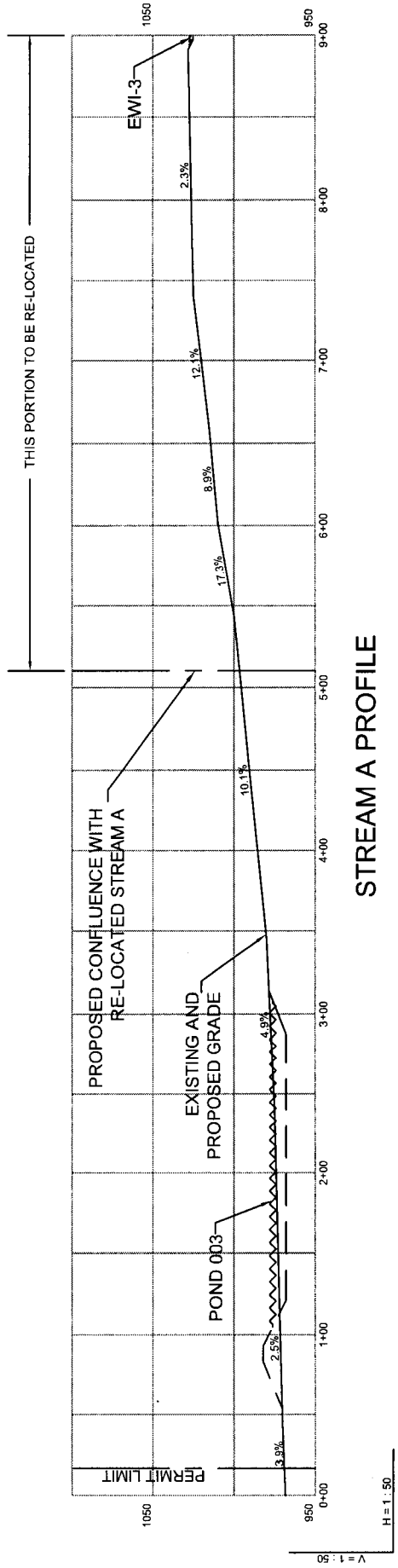
PREFERRED ALTERNATIVE

for  
**OXFORD MINING COMPANY**  
MIZER PERMIT

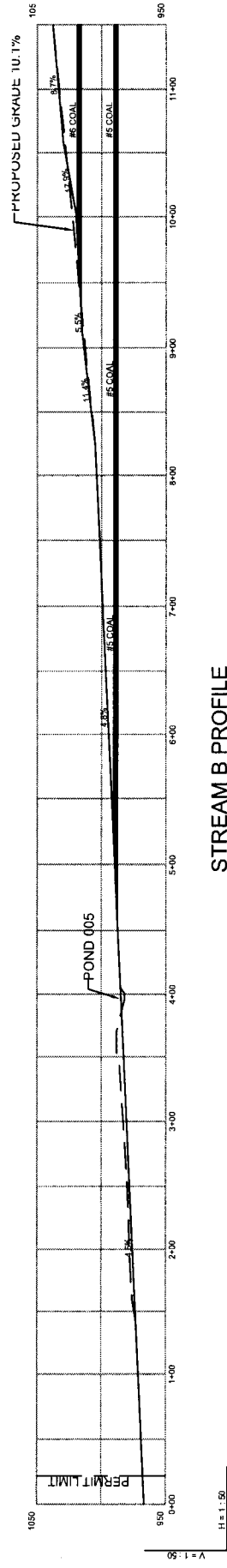
COUNTY: TUSCARAWAS STATE: OHIO



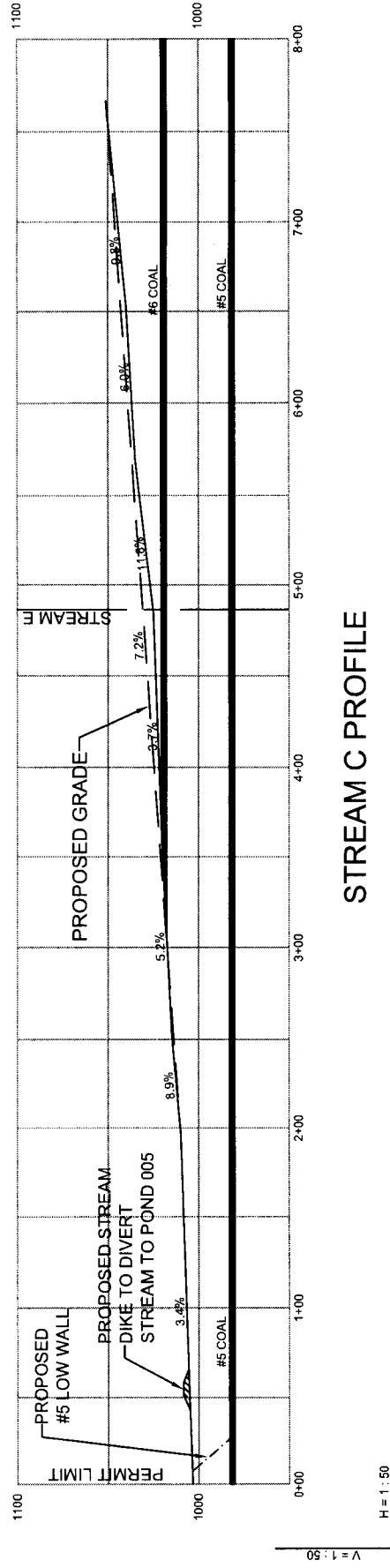




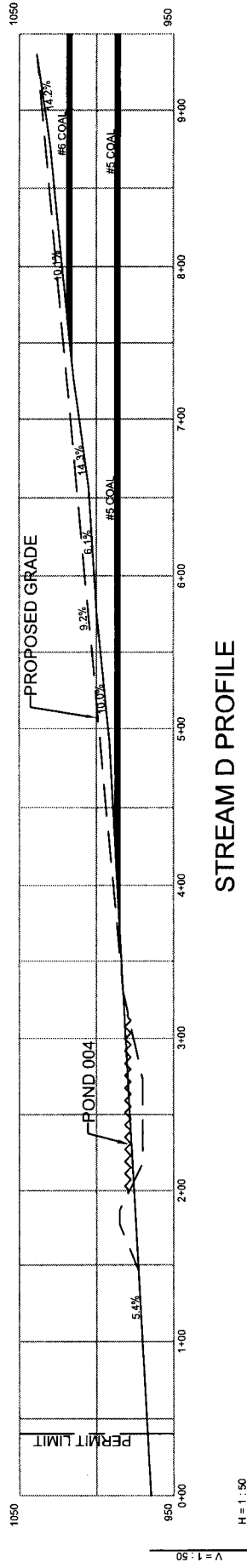
STREAM A PROFILE



STREAM B PROFILE

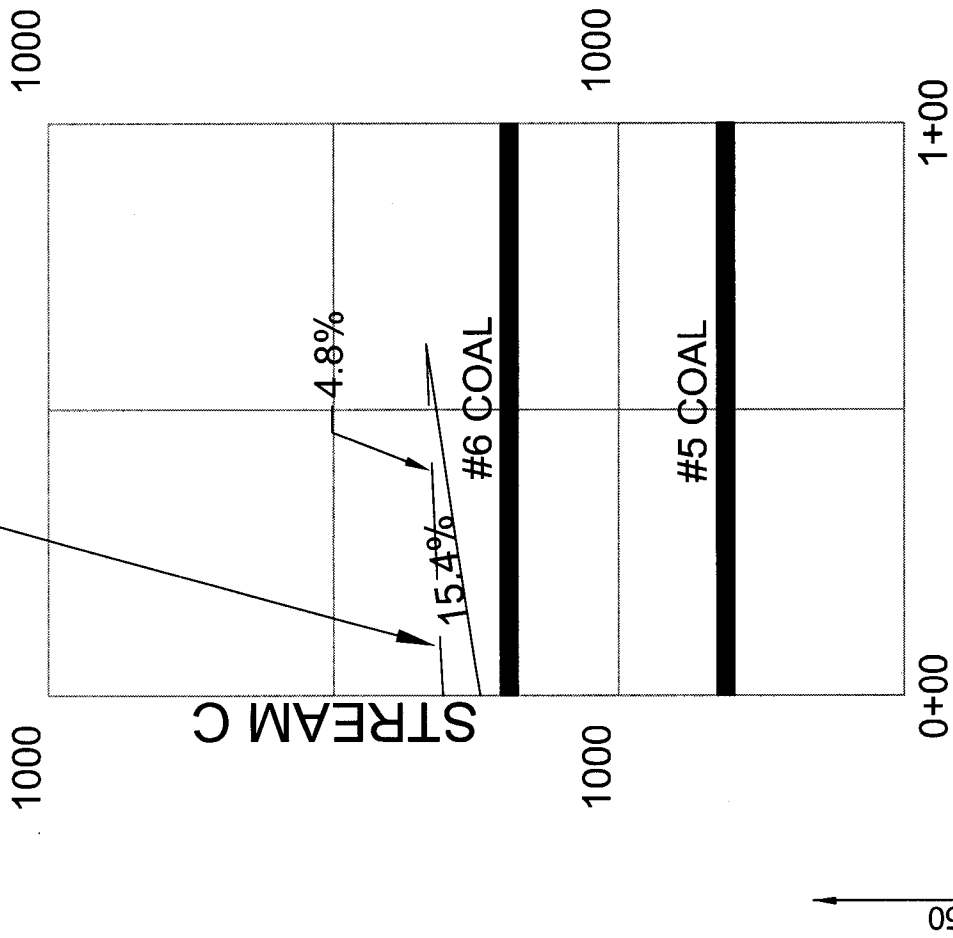


STREAM C PROFILE



Oxford Mining Company  
2005-1275-TUS - UNtrib Oldtown Creek  
Tuscarawas County, Ohio  
Cross-Section view - Stream D  
Sheet 7 of 8

PROPOSED GRADE



# STREAM E PROFILE

H = 1 : 50